



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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January 3, 2012

Ref: 8RA

Richard Opper, Director  
Montana Department of Environmental Quality  
1520 E. Sixth Avenue  
P.O. Box 200901  
Helena, MT 59620-0901

Dear Mr. Opper:

Thank you for the opportunity to conduct an initial review of Montana's draft analysis and assessment to support temporary variances for public and private entities from Montana's draft criteria for Wadeable Streams.

EPA understands that Montana passed SB 367 on April 21, 2011, authorizing the Montana Department of Environmental Quality (MDEQ) to establish numeric nutrient criteria (NNC) for nitrogen and phosphorous and to implement a variance process that supports incremental progress toward achieving those criteria on an adaptive management basis. Our understanding, based on numerous public meeting with stakeholders and conversations with your staff, is that MDEQ plans to propose rulemaking this spring to implement both the temporary variance process and related NNC. We also understand that your draft NNC for total phosphorous is 0.006-0.124 mg/L and for total nitrogen is 0.130-1.358 mg/L.

We commend you and your colleagues for the hard work and commitment to establishing numeric nutrient criteria and a related implementation process for the State of Montana. We recognize the strong science-based work MDEQ has conducted over the past several years to develop draft NNC for N and P for Wadeable Streams. This is an important step forward in addressing a pressing national problem. We also support your commitment to working closely with stakeholders throughout this process.

The variance provisions of the legislation provide for interim effluent values of no greater than 1 milligram of total phosphorous and 10 milligrams of total nitrogen per liter for facilities discharging greater than or equal to 1 million gallons per day, and 2 milligrams of total phosphorous and 15 milligrams of total nitrogen per liter for those facilities discharging less than 1 million gallons per day. Under the legislation, we understand that every three years these values must be revisited by MDEQ and adjusted, as necessary, to account for new, cost-effective and efficient treatment technologies and that the justification for these variances must be reviewed to ensure they remain valid.

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You have requested Region 8's preliminary comments on the variance approach outlined above. In that regard, MDEQ has provided its technical analysis, based upon available information, supporting the state's belief that a temporary variance process is essential to assure effective long-term implementation of the draft NNC. This analysis presents the State's assessment of the economic and social impact of Montana's draft nutrient criteria and takes into consideration the economic environment of Montana's industries and the statewide economic impact of compliance with the draft standard, consistent with EPA's Interim Economic Guidance for Water Quality Standards (EPA-823-B-95-002, March, 1995). It also assumes that immediate compliance with your draft NNC will necessitate reliance upon reverse osmosis to treat 100% of effluent. As EPA has stated in other contexts, the Agency believes that application of reverse osmosis on such a large scale has not been demonstrated as practical or necessary.

After careful review of the above-reference analysis and assumptions offered by the State, the EPA concludes that the issuance of the variances would be consistent with the Clean Water Act and its implementing regulations. As you understand, this conclusion is based upon recent conversations with your staff and the information provided to date. We look forward to continuing to work with you and the MDEQ to support your rulemaking process and to evaluate any additional information and analysis as it becomes available.

If you have any questions or need additional information please do not hesitate to contact me.

Sincerely,

  
James B. Martin  
Regional Administrator

